

**Observer Advisory Committee Report
May 12 - 13, 2005**

Alaska Fisheries Science Center
7600 Sand Point Way, NE, Seattle
Building 4, Room 1055
8:30 am - 5 pm

Committee: Joe Kyle (Chair), Julie Bonney, Peter Risse, John Gauvin, Tracey Mayhew, Paul MacGregor, Bob Mikol, Susan Robinson, Jerry Bongen, Arni Thomson, Brent Paine

Not present: LeeAnne Beres, Kim Dietrich, Rocky Caldero, Kathy Robinson

Staff: NPFMC - Chris Oliver, Nicole Kimball, Kent Lind (contractor)
NMFS/AFSC - Bill Karp, Martin Loefflad, Bob Maier, Todd Loomis
NMFS AK Region - Jason Anderson
NOAA Office for Law Enforcement (Alaska Division) - Mark Kirkland

Other participants: Earl Krygier, Anne Vanderhoeven, Mary Schwenzfeier, Lori Swanson, Eric Olson, Lisa Butzner, Mark Buckley, Bob Alverson, Michael Lake, Tim Meintz, Peggy Parker

- AGENDA:**
- I. Review and approve agenda
 - II. Update on status of Federal Observer Compensation Act (FOCA)
 - III. Update on Fair Labor Standards Act (FLSA) issues
 - IV. Review preliminary draft analysis to revise the funding and deployment mechanism of the North Pacific Groundfish Observer Program
 - V. Other issues
 - VI. Committee recommendations

I. Review and approve agenda

Introductions were made, and the Chair noted that the committee last convened in March 2004. The agenda was approved with one addition. The committee approved adding a discussion on recent litigation related to observer data confidentiality. The Chair noted that the primary purpose of the meeting was to review the preliminary draft analysis to change the funding and deployment mechanism in the North Pacific Groundfish Observer Program (Observer Program) and recommend any changes or additions to the analysis or the analytical approach. This task is in preparation for the Council's review of the preliminary analysis at its June 2005 Council meeting. The analysis was provided to the OAC prior to the meeting to facilitate its review.

II. Update on status of Federal Observer Compensation Act (FOCA)

Martin Loefflad and Bob Maier (NMFS) provided an overview of and update on the status of FOCA. This proposed legislation is intended to reduce the costs for observer insurance, limit vessel liability in the case of negligence claims, and provide a more comprehensive program for compensating observers in the event of work-related illness or injury. The most recent FOCA language available to the public (QuanTech report, March 2003) was provided to the committee, and staff noted that the National Observer Program (NOP) related that no significant changes to the substance of the bill have been made since the March 2003 version. The proposal continues to undergo internal agency review. As part of this review, the NOP has initiated a contract to analyze the financial impacts of implementing FOCA.

III. Update on Fair Labor Standards Act (FLSA) issues and discussions with the Department of Labor

Dr. Bill Karp (Observer Program Leader, NMFS) provided a brief overview of the NOP and recent changes in staff, direction, and policy. Lisa DeFosse is the new NOP Team Lead, and the NOP will meet in Seattle in June. Dr. Karp also described the purpose of the National Observer Program Advisory Team (NOPAT), which consists of one member from each region, and a headquarters and NOP representative. NOPAT works to address issues of common concern to the regional programs, and to address policy and financial issues and provide advice to the NOP.

Dr. Karp also presented a brief overview of the past two years' correspondence related to observer compensation issues and the status of observers with regard to the requirements for overtime pay included in the Fair Labor Standards Act (FLSA). This issue was brought to the forefront by a memo from Dr. Bill Hogarth in November 2003, which stated that NMFS maintains that fisheries observers are biological technicians and therefore eligible for overtime compensation under the FLSA. That memo raised several questions with regard to the status of observers in the North Pacific, although it was initiated due to issues surrounding an agency-funded observer program in Hawaii that required documentation of the agency's position.

In order to help clarify the issue, the Department of Labor (DOL) scheduled two public workshops in February 2005. These workshops were subsequently cancelled and have not been rescheduled, likely due in part to the complexity of the questions that DOL staff realized were likely to be asked. Dr. Karp met with the DOL in February in order to determine how to proceed with a request for answers to these outstanding questions regarding the applicability of exemptions under the FLSA.¹ Initiating the formal process requires a formal request from the Dept. of Commerce to the Dept. of Labor, and is estimated to take about six months. This request has not yet been drafted by NOAA and DOC.

The applicability of the FLSA and Service Contract Act (SCA) hinges on whether observers are determined to be technicians and not professionals.² NOPAT discussed this issue in 2002 – 2003, and the record indicates that while there was agreement in most cases that observers were likely to be classified as technicians, this was not likely the case in the North Pacific. A letter from Dr. Balsiger to Dr. Hogarth was sent on February 4, 2005, requesting concurrence in the determination that North Pacific groundfish observers should be classified as professionals under the FLSA, in order to properly recognize the professional nature of the work conducted by these observers and resolve the outstanding issues and cost uncertainties which make it difficult for the Council to restructure the Observer Program. No response has been received to date. Another viable alternative mentioned was to clarify that North Pacific observers are professionals in the Maguson-Stevens Act reauthorization.

One committee member also discussed the possibility of requesting NMFS to control or define the work hours for observers, similar to the CDQ and AFA fisheries. While this would not clarify the overtime compensation issue, it was offered as a potential solution to control costs. It was also noted that the current collective bargaining agreement assumes a 12 hour workday for observers and compensates them for that workday, and not on an hourly basis.

¹Letter from Helen Hurcombe, Director, Acquisitions and Grants Office, NOAA, to Timothy Helm, Team Leader, Government Contracts Team, Wage and Hour Division, U.S. Department of Labor, February 16, 2005. Response letter from Timothy Helm to Helen Hurcombe, February 22, 2005.

²The SCA establishes wage rate determinations and is only applicable to contracted employees whose work is classified as technical. Unlike the SCA, the FLSA issue is applicable under any service delivery model. The FLSA provides an exemption to its overtime pay requirements for employees whose specific duties and salary meet the threshold for a professional employee.

IV. Review of preliminary draft analysis to revise the funding and deployment mechanism of the North Pacific Groundfish Observer Program

Kent Lind (contractor) provided an overview of the preliminary draft analysis provided to the committee for review. Under the system proposed in the analysis, NMFS would contract directly with observer providers for observer coverage, funded by a broad-based user fee and/or direct Federal subsidy. Vessels and processors not covered under the new program would continue to operate under the existing program, whereby vessels contract directly with observer providers. The alternatives for the new program vary with regard to scope (i.e., which fleets or sectors are included in the new program and which remain in the current pay-as-you-go program). The action alternatives range from including all Gulf of Alaska (GOA) groundfish vessels to a comprehensive alternative that would include all vessels and processors fishing groundfish or halibut in Federal waters of the North Pacific. The following sections highlight committee discussion on specific issues within the analysis.

Tier classifications

The issue of coverage levels arises with the implementation of a program that rescinds the current coverage levels based on vessel length and processing volume and replaces them with one in which NMFS has flexibility to decide when and where to deploy observers. As a replacement for the existing vessel-length based categories, a four-tier system of coverage is proposed, in order to establish clear and uniform criteria for determining what level of coverage is required in each fishery. The intent is that all fishery sectors included under the new program would be placed in one of four tiers at final action, and a change from one tier to another would require a subsequent amendment and rulemaking process.

The OAC discussed the ‘tier system’ at length, specifically Tiers 3 and 4, in which NMFS has the flexibility to deploy observers according to a scientific sampling plan. Tier 3 would include sectors with characteristics that make regular, but less than 100%, observer coverage necessary to manage the fishery. Tier 4 would include sectors that currently do not have observer coverage (e.g., halibut and <60’ catcher vessels). In this tier, coverage levels would be less than Tier 3, and more oriented around fishery research or specific data needs than inseason management needs. The committee noted that the description of these tiers may need to be modified, such that it is clear that NMFS would have the authority to put observers on vessels in Tier 4. In addition, the OAC noted that there are some vessels in the <60’ fleet that harvest a significant portion of the overall catch for certain fisheries. These vessels may be candidates for Tier 3 rather than Tier 4 status – despite the fact that they are currently unobserved. The committee wanted to ensure that this action will meet the need identified in the problem statement to eliminate the coverage levels based on vessel size in order to increase the quality and utility of observer data.

It was emphasized that within Tier 3 and Tier 4, the primary advantage is the flexibility for NMFS to put observers when and where they are needed, as coverage levels within the tier are not fixed for any one vessel or fleet. The difference, however, is the expectation of regular coverage in Tier 3 versus more limited coverage in Tier 4. It was noted that the distinction between Tiers 3 and 4 may not be as important as the fee percentage selected, since the fee percentage dictates the number of observer coverage days NMFS has to work with. The committee also agreed that the analysis would benefit from a more comprehensive discussion of the data problems that are intended to be resolved in each tier and where the program might be 5 – 10 years from now in light of upcoming rationalization programs. One member also noted that another criterion for being in Tier 3 should be ‘minimal species composition diversity.’

The committee also noted that the analysis states that NMFS proposes that all catcher processors that are included in the new program have at least 100% coverage regardless of length, which puts them in either Tier 1 (200%) or Tier 2 (100%) depending on their other characteristics. The OAC requested additional rationale be provided in the analysis to justify this change.

Fee basis and percentage

The alternatives and options for analysis currently include two fee systems: 1) a uniform annual fee based on a percentage of ex-vessel value for every sector included in the new program, and 2) a uniform annual fee based a percentage of ex-vessel value for sectors in Tiers 3 and 4 (less than 100% coverage needs) and a daily observer fee for sectors in Tiers 1 and 2 (at least 100% coverage) included in the new program. The committee discussed the fee systems and recognized that the fee percentage depends on the sectors included in the new program and assessed an ex-vessel value fee. For instance, if sectors are brought in that have high coverage needs (100%) but relatively low revenues, the fee for all sectors increases. If large sectors with high revenues and low coverage needs are brought in, the fee for all sectors decreases. The committee noted that some sectors would be subsidizing other sectors under an ex-vessel fee program, yet the problem statement notes that part of the purpose of the new program is to address the disproportionate costs that some sectors currently pay for observer coverage. All sectors included in the ex-vessel value fee program would be assessed the same fee percentage, and that fee would be selected at final action. The intent is that the fee would not be subject to change until a subsequent amendment and rulemaking process were completed.

The committee also recognized the reason for including a daily observer fee for vessels that are in Tiers 1 and 2 that require 200% and 100% coverage, respectively. In this case, vessels would not be contributing to the fee percentage, but would pay for their observers similarly to how they do now, except they would be paying NMFS directly instead of the observer contractor. The primary reason the Council added the option to assess a daily fee for these sectors was to ensure that funds are available to exactly match the costs of coverage for fisheries that require 100% and 200% coverage. A fee based on ex-vessel value is subject to several variables, such as TACs, ex-vessel prices, and harvest levels. The revenue generated by a fee of this type is less certain on a year to year basis. Thus, it makes more sense to assess an ex-vessel value fee on fisheries in which 100% coverage is not absolutely necessary to manage the fishery. In effect, the daily fee is necessary if one wants to be certain that revenue shortfalls do not prevent the coverage needs from being met.

One member questioned whether the data used to determine prices (and thus the ex-vessel fee) is sufficiently representative for all fleets. A public participant noted that CDQ harvests included in the tables showing *current* observer coverage costs in terms of a percentage of ex-vessel revenues will elevate the average costs for the fleet (which consists of CDQ and non-CDQ vessels).

Standard prices versus actual prices

The committee also discussed whether standard prices could be used to determine the annual ex-vessel based fee, or whether actual prices are necessary. Members agreed that standard prices are accurate for the halibut fleet, and that the cost associated with tracking actual prices is higher than the benefit one might recoup if actual prices were used. The analysis indicates that in 2004, 95% of IFQ permit holders chose to use standard, rather than actual, prices. It was noted that the halibut fleet sells into a fairly homogenous market. Other fisheries may not be as well suited to standardized ex-vessel values. Currently, Alternatives 2 and 3 use standardized prices to determine the fee for all vessels, and Alternatives 4- 7 use actual prices for the catcher vessel fleets.

Start-up funding

The committee agreed that it is appropriate for the Federal government to provide funds to start the new observer program and/or to provide ongoing subsidies. The committee discussed the potential for requesting Congressional funding and/or NOP funding, either by apportioning existing funds or new monies to the North Pacific. The NOP budget has increased in recent years, which may represent a potential source of start-up funding. It was noted that it is not feasible to expect industry to pay 'double'

for even a limited period of time (e.g., pay for observers to operate in the current program and provide start-up funding for the upcoming fee program). It was also noted that the North Pacific continues to face resistance for Federal funding support, and the rationale provided has primarily been focused on the success and level of coverage in the current industry-funded program and the notion that new funding should fund new observer days in regions that do not have coverage. However, the rationale for Federal funding in the North Pacific may be strengthened by the extension of the new observer program to fleets that currently do not have any observer coverage. Another possibility is to approve the new observer program on the condition that Federal start-up funding (or an on-going Federal subsidy) is provided. Under all alternatives, NMFS would continue to be responsible for administrative costs.

Technological monitoring options

The committee hopes NMFS will aggressively pursue technological monitoring options, and expressed concern that those options appear to be underplayed in the preliminary analysis. Staff noted that while VMS, electronic logbook, and a joint electronic reporting system are discussed in the analysis and Appendix I, none of these technologies are currently mandated under any particular alternative. There is a decision point in the analysis to determine whether there should be a restriction on fee proceeds to limit its use to pay for costs directly associated with coverage by human observers. However, the program could be designed such that some fee proceeds could be used to subsidize or pay for alternative monitoring technologies that could be required in the future. Some committee members voiced concern that one or more of these technologies should be in place when the new program is implemented. It was noted that these technological concepts are being considered as part of a larger effort within the agency, and may be more appropriately addressed on a separate track. Yet if the agency determines that a particular technology is necessary to implement one or more of the alternatives in the observer amendment, this determination should be explicit and analyzed in this package prior to final action. NMFS will further consider these issues prior to release of the next draft.

Deployment of observers

NMFS staff provided an overview of Section 4.3, which describes how NMFS would deploy observers under the alternatives. The agency noted that it intends to meet with industry in the future to receive feedback on potential implementation structures and expand this section for future drafts.

In Tiers 1 and 2, NMFS described the need for the vessel to provide: an annual fishing or operation plan; the date and location the vessel wants observers to board a minimum of 10 days prior to that date; and 48 hour departure notification. In addition, the agency is exploring the use of VMS as a compliance tool for departure notification requirements (see above section). The committee expressed concern with the ability to provide 48 hour notice in a limited access (versus rationalized) fishery and the need for VMS as an enforcement tool if you have 100% or 200% coverage requirements. One member noted that NMFS could work through the cooperative managers for the AFA fleet to increase efficiency and avoid having to coordinate with each individual vessel.

In Tiers 3 and 4, in which less than 100% coverage is required, the choices surrounding observer deployment are more complex. NMFS described two potential bookends that could be used to determine annual deployment decisions: Bookend 1) an annual coverage decision making model; or Bookend 2) a real-time coverage decision making model. Observers would be deployed on a random or systematic basis under the annual model, but would use the annual planning process to direct that deployment throughout the year. The observer provider would likely be responsible for deploying observers according to the annual plan. The real-time model would require more information on a rapid basis, as NMFS would attempt to match real-time fleet information to fishing effort and determine where to put observers based on target fishery, temporal, and spatial fishing patterns. NMFS would thus have more day to day responsibility for determining where to place observers under Bookend 2. The committee recognized

advantages and disadvantages with both bookends, understanding that some combination of the two could also be developed.

Supplemental fees

The committee discussed the concept of supplemental fees, should some fisheries shift into a rationalization program that would necessitate higher coverage levels than exist now. The committee recognized that if supplemental fees become necessary in the future, they would fit within the service delivery model proposed in the amendment package (direct contracting model) and not require any fundamental changes to the program structure. Under a new rationalization program (such as Gulf groundfish), the monitoring requirements will have to be developed specific to that program during the development of that analysis. The committee discussed the possibility that vessels included in that program would change tier levels (e.g., to one that requires at least 100% coverage) and continue to pay the fee percentage selected under the observer amendment. While the observer coverage levels increase, additional fee revenues would likely also be generated due to the added value expected through the rationalization regime. Alternatively, supplemental fees may need to be assessed on only those vessels that benefit from the rationalization program. It was also noted that the ability to pay for the monitoring requirements associated with each rationalization alternative may drive the selection of the preferred alternative in new rationalization programs.

Contracting process

NMFS provided a review of the Federal contracting process and the Indefinite Delivery/Indefinite Quantity (IDIQ) contract approach that appears to be viable under the restructured program (Section 4.8 of the analysis). NMFS noted that under any of the action alternatives, private observer companies will continue to be the source of all observers deployed under the new system, the difference being that NMFS would be the entity contracting with the company and responsible for coverage rather than the vessel owner. The primary advantage to the IDIQ approach is that it is a relatively flexible framework that would allow NMFS to identify a body of work and award it to multiple vendors if desired. There are also no requirements for start-up funding to initiate an IDIQ contract; however, issuing task orders would require funding to cover that specific task order. Task orders are developed as necessary.

NMFS also noted that it would likely take about a year to award the contract, so that time needs to be included in the estimated timeline for implementation. NMFS plans to expand Section 4.8 of the analysis to include some potential contract constructs that may better show how the actual modules would operate. The analysis states that one potential task that could be included in the contract is the requirement that the observer company maintain a system of tracking vessels; one member noted that it may be problematic to shift this responsibility to the contractor.

Crossover issues – Hybrid program

The committee reviewed the issues in Section 4.9 associated with administering two separate programs under Alternatives 2 – 6, in the case that not all sectors are included in the restructured program. In effect, a hybrid program would mean implementing one program based on Federal contracts for observer services and one program through regulations similar to the existing program (pay-as-you-go). Alternative 7 is the only alternative which includes all vessels and processors fishing in Federal waters under the restructured program. Generally, the committee believed this section needed additional work if NMFS wants to justify the difficulty in implementing a hybrid program. NMFS concerns are generally related to tracking government funds and data quality. With regard to tracking government funds in a hybrid program, NMFS noted difficulty in verifying that invoices received from contractors cover only services provided to the government and not any portion of costs that are attributable to the industry contract. With regard to data quality, NMFS stated that it is unable to adequately: 1) match deployment

complexity to observer skill level; 2) address the potential bias associated with non-random placement of observers in the <100% covered fleet; and 3) control data quality through standards for the observer provider.

The committee did not comment on the concern with tracking government funds. The committee noted that the agency's concerns with a hybrid program, while not ideal for the agency, should be manageable. Furthermore, the committee notes that a hybrid program meets the objectives of the problem statement by increasing data quality relative to the status quo. The committee requested additional information on why the issues identified by NMFS cannot be resolved through policy or regulation for those sectors that may not be included in the new system and questioned whether there are solutions that the agency could explore that would facilitate implementation of a hybrid program.

Enforcement

The committee reviewed the current enforcement duties associated with the existing program, and how those duties may change under the restructured program. Mark Kirkland from NOAA Enforcement noted that while the focus of enforcement activity would shift from compliance with coverage requirements to compliance with notification requirements, the overall enforcement burden would not likely change to any great extent. In addition, Enforcement would continue to enforce regulations protecting observers from harassment and interference with their work as is currently the case today.

Schedule

Staff reviewed the schedule for completing the analysis. Initial review will likely be scheduled for late this year or February 2006. The current program expiration is December 31, 2007. Final action to extend the current program (status quo) would be necessary by April 2007, but final action on a restructured program would likely be necessary by April 2006 for implementation by January 1, 2008.

Staff noted that the potential for permanently extending the current pay-as-you-go program to sectors not covered by the action alternative has been incorporated in Option 8 of the analysis, such that if the Council determined at final action that some portion of the fleet should continue to be in the existing system, a new analysis and amendment package would not be necessary. In addition, staff will explore ways to modify Option 8 such that it would allow the Council to rollover the existing program temporarily for all sectors (including those in the new fee program) in the case that there is a lag in implementation between the time of Council final action and the current program expiration of December 31, 2007.

V. Other issues: briefing on recent litigation related to observer data confidentiality

Paul MacGregor (Mundt MacGregor LLP) briefed the committee on recent litigation related to the confidentiality of observer data. Last April, his firm was retained to file suit against the DOC on behalf of various industry sectors involved in the Alaska groundfish and crab fisheries. In that suit, the plaintiff fishing groups challenged DOC's decision to release non-aggregated observer data in response to a FOIA request by Oceana. Following a hearing on the industry's motion for a temporary restraining order, the judge granted a temporary order enjoining the DOC until a full hearing could be held. Oceana subsequently withdrew its FOIA request and the suit was dismissed, but without any final ruling by the court on the confidentiality issue. NMFS noted that the confidentiality issue is likely to be addressed in the MSA reauthorization proposal the agency plans to submit to Congress. This package is not yet available to the public.

VI. Recommendations

The committee made several recommendations related to two broad categories: 1) potential MSA reauthorization and policy issues; and 2) changes to the preliminary draft analysis. The committee also made several minor suggestions for the analysis, such as wording changes, additions, and clarifications, that staff will attempt to incorporate for the initial review draft (see **Attachment 1**). The committee was advised that these types of changes did not necessitate a formal committee recommendation.

MSA and policy recommendations:

- If any ambiguity remains about releasing non-aggregated observer data then it should be resolved under the MSA reauthorization such that non-aggregated data is classified as confidential and cannot be released. The confidentiality policy should apply whether the data is collected by a human observer or via technological monitoring.
- Request agency determination that North Pacific groundfish observers are classified as professionals (not technicians) via the memo sent from Dr. Balsiger to Dr. Hogarth (2/4/05).
- Support an amendment to the MSA that defines North Pacific groundfish observers as professionals under the Fair Labor Standards Act.
- Request that staff provide documentation and rationale on why the NPGOP should receive Federal start-up funding and/or ongoing funding. Provide this information to the committee and in the analysis.

Recommendations on the analysis:

- Provide data on the distribution of catch by vessel length for catcher processors, to determine whether there is a more appropriate threshold to determine which catcher processors need at least 100% coverage for management purposes (Tier 2).
- Provide expanded rationale in the analysis for the agency proposal to require at least 100% coverage on all catcher processors.
- Explore a more appropriate delineation between vessels classified as Tier 3 (regular coverage) and Tier 4 (infrequent coverage), other than whether observer data is currently used for inseason management. Explore a threshold based on capacity, and not whether vessels have had required coverage in the past. Make it explicit that vessels in Tier 4 can be required to carry observers at the request of NMFS.
- Provide estimates of the upper bounds of current observer costs, especially for 'short pulse' fisheries whose actual costs may exceed the calculated averages.
- The committee recommended that it convene again prior to the Council's initial review of the analysis and also prior to final action.

Finally, the committee discussed the need to initiate a subcommittee of the OAC or a separate Council committee to address technological monitoring options in a comprehensive fashion. The intent is that this committee would review the MRAG report on technological monitoring approaches (Appendix I), discuss practical and logistical issues associated with technological monitoring, and make recommendations as to how technology can be integrated into our current and proposed monitoring programs. The committee recognized that significant consideration should be given to the representation on the committee and the agency staff that would need to be involved. There was also consensus among committee members that the OAC should be better integrated into the developmental process for new rationalization programs.

List of modifications to the analysis requested by the OAC

1. Revise text so that Tier 4 is not characterized as ‘rare and infrequent’ coverage. Make it explicit that NMFS will have the authority to place observers on vessels in Tier 4, and that Tier 4 vessels will be paying the same fee percentage as all other tiers included in the ex-vessel value based fee program.
2. Add discussion of goals that the agency wants to resolve related to inseason management by allowing placement of observers on Tier 4 vessels.
3. Change ‘Alaska Fishermen’s Union’ to: Alaska Fisheries Division of the United Industrial Workers.
4. Confirm with NMFS whether the price data used to determine the ex-vessel revenues for each sector used a specific price for yellowfin sole or whether all flatfish prices were aggregated.
5. Provide footnote to Table 4.4-2 explaining that the inclusion of vessels fishing CDQ will increase the estimates for the current average observer costs, specifically for the <125’ longline CP sector.
6. Be explicit about technological monitoring requirements if they are included within specific alternatives in the future.
7. Add a description in Chapter 4 of what is meant by 100% (one observer) and 200% (two observers) coverage requirements.
8. Modify language on p. 99 related to at-sea discards of pollock in the AFA catcher vessel fleet.
9. Follow through with statement on p. 105 to have NMFS work with the industry and observer providers on proposed requirements (e.g. departure notification, fishing plans, etc.) to facilitate observer deployment under the new program.
10. Delete second paragraph under Section 4.3.3 (editing error).
11. Add discussion in Section 4.4 on caveats to the average costs provided in Tables 4.4-1 and 4.4-2, specifically for the 30% fleet. Travel and room and board expenses pro-rated over the daily rate increase the overall rate. Work with the observer providers to groundtruth the average cost per day for the various sectors. Show upper bounds in text.
12. Amend Tables 4.4-3 through 4.4-6 to show which fleets are included under each alternative. Add footnote that these tables include CDQ fishing.
13. Change name to Digital Observer, Inc. where found throughout analysis.
14. Provide footnote to Tables 4.4-1 and 4.4-2, that the prices for individual vessels in the non-AFA trawl catcher processor sector may vary substantially from the average.
15. Consider adding tables that would show the fee percentage if the Federal government funded some portion of the fee and/or start-up funding for the first year.
16. Highlight known future rationalization programs where appropriate (GOA groundfish rationalization, BSAI Amendment 79/80).
17. Add a second version of Table 4.4-2 (status quo coverage costs in terms of percentage of ex-vessel revenues) assuming that all non-AFA catcher processors are required to have 200% coverage.
18. Clarify in text that no frameworking mechanism is proposed to allow the fee to be increased without undergoing an analytical and rulemaking process.
19. Change table reference on p. 122 to Table 4.2-7.
20. Provide a table on p. 121 that shows the high endpoint fee that would be assessed if all catcher processors were required to have 100% coverage (e.g., midpoint between Table 4.4-4 and 4.4-5).
21. Provide additional discussion in Section 4.9 to clarify NMFS’s concerns with administering a hybrid program.